



EMPLOYER/EMPLOYEE RELATIONS AND ARBITRATION

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LEGAL LANDSCAPE – PUBLIC UNIONISM



Meyers-Milias Brown Act (MMBA)

- Established in 1968 - Government Code 3500 – 3511¹
- The right of public officers and employees to organize
- Provides the requirement to meet and confer in good faith (3505)
 - Wages and working conditions
 - Recognize bargaining units
- California's municipal, county, and local special district employers and employees
- Brought under California Public Employment Relations Board (PERB) July 1, 2001
- PERB's jurisdiction excludes peace officers and management employees

1. https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3500.5.&nodeTreePath=2.6.17&lawCode=GOV



California Public Employment Relations Board (PERB)

- California Government Code 3541
 - Governor appointed – 5 members
 - Responsible for administering statutes
 - Hold elections to garner interest in unionizing
 - Prevent and remedy unfair labor practices
 - Bring court action to enforce PERB decisions and rulings
 - Other actions to fulfill purposes of Act
 - Unions or employers may file unfair labor charges
 - Provides for State Mediation & Conciliation services
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Police Officer's Bill of Rights (POBR)

- California Government Code 3300 – 3311²
- Set of rights intended to protect American law enforcement personnel from unreasonable investigation and prosecution arising from conduct during the official performance of their duties, through procedural safeguards.
- Covers rights regarding:
 - Under investigation and in interrogation
 - Punitive actions such as dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer
 - Afforded right to representation
 - Right to appeal (3304.5)

2. https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=3303.&lawCode=GOV



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MEMORANDUM OF UNDERSTANDING (MOU)



MOU Requirements

- Meet and Confer in Good Faith
 - 3504 - The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.
 - Contract negotiations
 - Contracts cover a period of time and expire, at which time parties begin to meet and confer
 - Current contract expires June 30, 2027
 - Side Letters
 - Between expirations, parties may meet for operational needs.
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Employer Rights

- Section 2 – Management Rights
 - Exclusive right to operate and direct the affairs of the City
 - Direct work
 - Control operations and services
 - Determine the methods, means, and organizations by which such operations and services are to be conducted
 - To hire, promote, demote, suspend, discipline discharge or relieve employees due to lack of work or other legitimate reasons
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Disciplinary Sections

- Section 32 – Disciplinary Actions
 - List of agreed upon causes for disciplinary action such as dishonesty, fraud, policy violations, etc.
 - Section 33 – Disciplinary Appeals
 - Non-arbitrable – written reprimand appealable to the City Manager
 - Arbitrable – dismissal, suspension, step reduction, demotion or disciplinary probation.
Demotion allowable in lieu of layoff.
 - Notice of appeal filed with Director of Human Resources within 30 days of action
 - List of hearing officers requested through the State Mediation and Conciliation Service
 - Cost of hearing officer divided equally between City and employee
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MOU Changes in Process

- Tentative Agreement changes
 - These items are negotiated and ratified by the union as well as approved by Council
 - Language Clean Up – No changes to economic or operational
 - Method of release time allowance
 - Changes in duty titles that have changed
 - Removal of irrelevant (old) language
 - Updating of scheduling language
 - Clearer language where needed
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APPEALS AND ARBITRATION



California & US Constitution

- Article 1, Section 7 and the 14th Amendment
 - The United States nor shall any State deprive any person of life, liberty, or property, without due process
 - Public employees have a property interest in their employment
 - Often referred to as “for cause” employees
 - Entitled to an evidentiary hearing when imposing serious discipline
 - Due process
 - Full evidentiary hearing include the opportunity for sworn witness testimony, cross-examination of witnesses and presentation of evidence
 - The employer bears the burden of production of evidence and the burden of proof of evidence at the hearing
 - POBR affords similar rights (3304.5)
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Arbitration

- Due process does not require arbitration
 - Arbitration is the preferred method for many agencies
 - Greater finality as it is binding
 - It provides for a neutral outside decision-maker
 - Other processes afford employees rights to go to Superior Court to seek having decision overturned
 - Similar to court proceedings but not the same
 - Parties present case
 - Witnesses can be called and are under oath
 - Hearings are not open to the public
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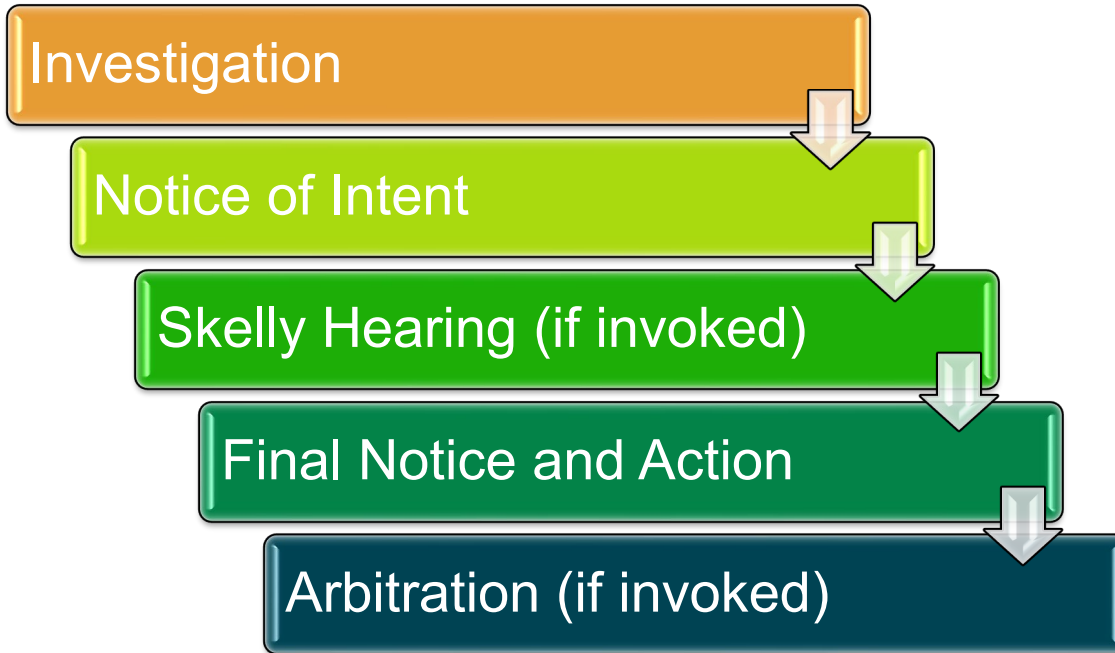


If Not Arbitration, Then What?

- Some agencies may opt for an administrative hearing process
 - Not final and binding
 - Neutrality can be challenged
 - Can be appealed to the Superior Court and overturned
 - Left to a Superior Court Judge who may or may not have knowledge and expertise in the subject matter
 - Advisory Arbitration
 - Not binding but advisory to the City Manager
 - City Manager has the final decision
 - Can be appealed to the Superior Court
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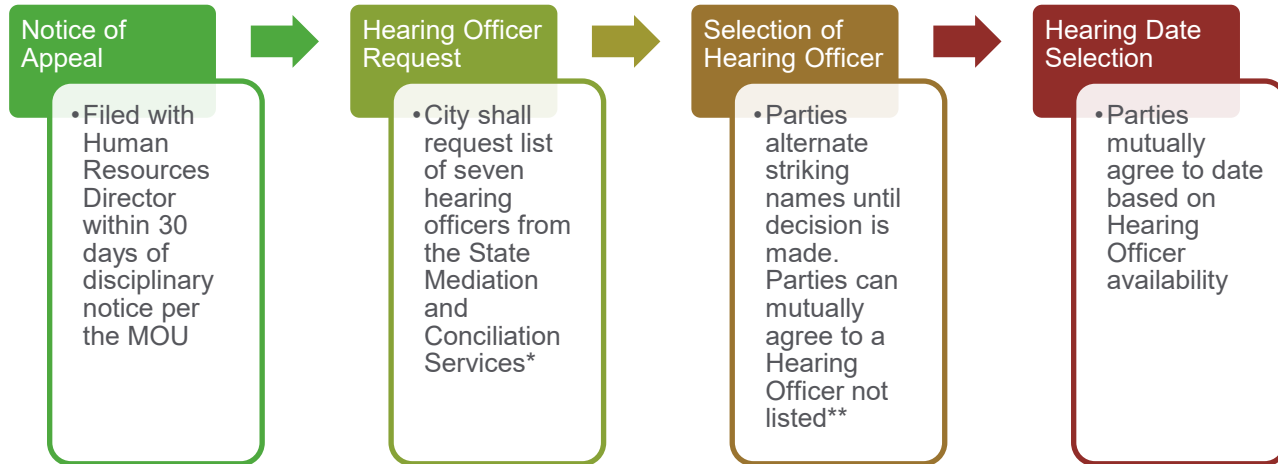


Process Order for Discipline





Arbitrator Selection Process



* Receive list of arbitrators, resumes, and case history

** Form to complete includes membership requirements (such as American Arbitration Association) as well as area of expertise (Police, State Government, Healthcare, etc.).



Frequency and Types

Employee Group	Types
Sworn - 7	Terminations, suspensions, demotions
Non-Sworn - 6	Terminations, demotions

- Data is for last ten years – total of thirteen
 - Only one was within the last five years
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